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Office of the Director
Group 3600

Kane, Dalsimer, Sullivan, Kurucz, Levy, Eisele & Richard
711 Third Avenue
New York, NY 10017

In re application of

Toyoaki Namba

Application No. 09/127,067

Filed: July 31, 1998

For: SHEETS POST PROCESSING DEVICE:
INCLUDING STAPLER FOR VARIABLE
WIDTHS

DECISION ON REQUEST
FOR WITHDRAWAL OF
ATTORNEY

This is a decision on the request filed on June 5, 2002, under 37 CFR 1.36 and MPEP 402.06, requesting permission to withdraw as the attorney of record in the above-identified application.

The request is **NOT APPROVED**.

Under 37 CFR 1.36 an attorney may withdraw only upon application to and approval by the Commissioner. It should be noted that a withdrawal is effective when approved, not when filed. Besides giving due notice to his or her client and delivering to the client all papers and property to which the client is entitled as specified under 37 CFR 10.40, approval of such a request requires that the following conditions be met:

- A) Each attorney of record must sign the notice of withdrawal, or the notice must contain a clear indication of one attorney signing on behalf of another, because the Office does not recognize law firms;
- B) A proper reason for the withdrawal as enumerated in 37 CFR 10.40(b) or subsection (1)-(6) of 37 CFR 10.40(c) must be provided; and
- C) If withdrawal is requested in accordance with 37 CFR 10.40(c) above, there must be at least 30 days between approval of the withdrawal and the later of the expiration date of a time period for reply or the expiration date of the period which can be obtained by a petition and fee for extension of time under 37 CFR 1.136(a).

The request to withdraw as attorney is not accepted in the above-identified application because the request lacks condition B) above.

As to condition B), the reason given, that "the Japanese patent agent has failed to pay an outstanding balance", is not acceptable. While non-payment of fees is a valid reason for withdrawal under 37 CFR 10.40(c)(1)(vi), there is no indication in the file record of the Japanese patent agent being the "client", and responsible for payment of legal fees. The file record would appear to indicate that the applicant is the client by virtue of his conferring power of attorney to the attorneys listed in the declaration.



Steven N. Meyers
Special Programs Examiner
Patent Technology Center 3600
(703) 308-3868
Facsimile No.: (703) 605-0586

snm: 10/20/02